

## INFORMATION PAPER

SUBJECT: Potential Loss of Benefits Associated with a Not in Line of Duty Determination - Due to Own Misconduct

1. Purpose. To summarize the consequences that can occur when a line of duty (LD) investigation determines that a Soldier's disease, injury, or death to be not in LD due to that Soldier's own misconduct.

2. Facts. Army Regulation (AR) 600-8-4, Line of Duty Policy, Procedures, and Investigations, prescribes policies and procedures for investigating the circumstances of disease, injury, or death of a Soldier and provides standards and considerations used in determining LD status. LD investigations are conducted to determine whether misconduct or negligence was involved in the disease, injury, or death of a Soldier and, if so, to what degree. Simple or ordinary negligence or carelessness, standing alone, would not constitute misconduct, and any injury, disease, or death caused solely by simple negligence will generally be considered to be in LD. However, when injury, disease or death is proximately caused by a Soldier's intentional misconduct, willful negligence, abuse of alcohol, or abuse of drugs, a determination of not in LD - due to own misconduct will result. The not in LD - due to own misconduct determination has significant impact on the benefits that a Soldier, or the surviving family members of a Soldier, might otherwise receive.

3. AR 600-8-4 provides that the following benefits may be lost if time spent away from regular duty exceeds one day due to the Soldier's intemperate use of drugs or alcohol. If a Soldier's injury or diseases was found to be proximately caused by that Soldier's intentional misconduct, willful negligence, abuse of alcohol, or abuse of drugs, such that the Soldier is unable to perform duties for more than one day, the following benefits may be lost and/penalties may result:

a. Extended enlistment. Time may be effectively added to the Soldier's enlistment contract (i.e., the Soldier will need to serve for a period of time equal to his or her absence from duty) that results in the Soldier's ETS date being moved back one day for every day that the Soldier missed duty.

b. Longevity pay increases and retirement multiplier. Time may not be included in the calculation for either pay increases or the amount of retirement pay.

c. Forfeiture of pay. Pay is forfeited for absence from duty because of disease directly caused by and immediately following the intemperate use of drugs and alcohol. Pay is not forfeited for absence from duty caused by injuries.

d. Disability retirement and severance pay. Any medical condition that is determined to have been incurred not in LD may not serve as the basis for a medical or disability retirement or separation.

4. If a Soldier's death is found to be not in LD due to own misconduct because of intentional misconduct, willful negligence as a result of the abuse of alcohol or drugs, the following benefits may be lost:

a. Survivor Benefit Plan (SBP) (10 USC § 1072). If a Soldier is not retirement eligible (less than 20 years active service) at the time of death and the death is determined to be not in LD due to own misconduct, then the Soldier does not qualify for SBP benefits. If a Soldier is retirement eligible at the time of death and the death is determined to be not in LD, then the SBP base amount is equal to the retired pay as if the member were retired for length of service.

b. Select Department of Veterans Affairs Benefits. Note: Because these are VA-administered benefits, the VA makes the final determination as to eligibility.

(1) Dependency and Indemnity Compensation (DIC) (38 USC § 1311). This benefit may not be available if the Soldier's death results from the Soldier's intentional misconduct or willful negligence and may adversely affect DIC eligibility for surviving family members.

(2) Montgomery GI Bill Death Benefit (38 USC § 1623). Designated survivors may lose this benefit if the Soldier's death is not determined to be in service or service-connected.

(3) Survivors' and Dependents' Education (38 USC Chapter 35). Spouses and children of veterans who die or are permanently and totally disabled as a result of a disability arising from active service in the Armed Forces may qualify for education assistance benefits. A Soldier's death determined to

be not in the LD may impact the eligibility of his or her dependents to take advantage of this benefit.

(4) Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA)(38 USC § 1781). CHAMPVA provides health care for qualifying spouses and children of veterans in which the VA shares the cost of covered health care services and supplies with eligible beneficiaries. A Soldier's death must be in the LD, not due to intentional misconduct or willful negligence for his or her surviving spouse or child to qualify as an eligible beneficiary. A finding of not in the LD could preclude the Soldier's surviving spouse or child from qualifying for CHAMPVA. If not eligible for CHAMPVA, the surviving dependents of a Soldier who dies while on active duty, whether or not the death is determined to be in the LD, may be eligible to continue TRICARE benefits for up to three years after the Soldier's death.